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Federal Communications Commission VAN = 6 1994

Washington, D.C. 20554 FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY In re Applications of MM Docket No. 93-302 VICTORY CHRISTIAN CENTER, INC. File No. BPH-920326MA INTERMART BROADCASTING OF File No. BPH-920326MB NORTH CAROLINA, INC. TODD P. ROBINSON File No. BPH-920327MI SATURDAY COMMUNICATIONS File No. BPH-920327ML LIMITED PARTNERSHIP For Construction Permit for a New FM Station on Channel 224A in Harrisburg, North Carolina

TO: The Honorable Richard L. Sippel Administrative Law Judge

JOINT REQUEST FOR APPROVAL OF AGREEMENT

Pursuant to Section 73.3525 of the Commission's Rules, InterMart

Broadcasting of North Carolina, Inc. ("InterMart"); Todd P. Robinson ("Robinson");

Victory Christian Center, Inc. ("VCC"); and Saturday Communications Limited

Partnership ("SCLP"), by their respective attorneys, jointly request approval of the attached Settlement Agreement.

1. <u>Summary of Negotiations</u>. These mutually-exclusive FM construction permit applications for Harrisburg, North Carolina, were designated for hearing by <u>Hearing Designation Order ("HDO")</u>, 93M-766, released December 22, 1993. The parties have now agreed to a settlement of the proceeding. The instant Joint Request transmits a Settlement Agreement to the Presiding Judge, for approval, which would settle this case.

No. of Copies rec'd

- 2. <u>Description of Agreement</u>. The Settlement Agreement (copy attached hereto) provides that VCC and SCLP shall dismiss their applications in consideration of a cash payment which is equal to VCC and SCLP's legitimate and prudent expenses as that term is defined by Section 73.3525(i) of the Rules. Robinson and James E. Martin, Jr., have agreed to merge as equal shareholders in InterMart, with Robinson's application being dismissed. The merger is a simple "50-50" division of equity, profit, losses, and cost advances between the shareholders, thus no question is raised as to its bona fides. The cash payment is to be made within five (5) business days after the construction permit is granted to InterMart and the Order granting the construction permit has become a Final Order. Declarations¹ from the appropriate officers, or owners of VCC, SCLP, Robinson and InterMart are attached hereto showing (a) the amount legitimately and prudently expended by VCC² and SCLP in preparing and prosecuting their applications; (b) the reasons why the settlement is in the public interest; and (c) that none of the applications were filed for the purpose of reaching or carrying out the settlement agreement.
- 3. <u>InterMart's Qualifications</u>. Except for a contingent environmental impact issue, there are no issues³ pending or requested against InterMart which would raise questions concerning the qualifications of InterMart to be a Commission licensee.

¹ Some of the declarations are facsimilies. Original counterparts will be filed upon receipt by counsel.

² VCC's expenses will be provided as a supplement to this Joint Request for Approval of Agreement.

³ InterMart has amended its application to address the environmental concerns set out in the <u>HDO</u>. If the amendment meets the Mass Media Bureau's concerns, the contingent environmental issue will become moot.

InterMart is financially qualified to construct and operate the station for three months without reliance upon revenues, and to pay the amount of reimbursement to VCC and SCLP.

WHEREFORE, in consideration of the above, it is respectfully requested that (a) the Settlement Agreement be approved; (b) the applications of VCC (File No. BPH-920326MA), SCLP (File No. BPH-920327ML), and Robinson (File No. BPH-920326MA), BE DISMISSED WITH PREJUDICE and the amended application of InterMart (File No. BPH-920326MB), for a new commercial FM station at Harrisburg, North Carolina, be GRANTED.

Respectfully submitted,

VICTORY CHRISTIAN CENTER, INC.

 $\mathbf{R}\mathbf{v}$

John E. Fiorini, III

Its Attorney

an Gss

GARDNER, CARTON & DOUGLAS

1301 K Street, N.W. Suite 900, East Tower Washington, D.C. 20005

INTERMART BROADCASTING OF

NORTH CAROLINA, INC.

By:

Gary S. Smithwick

Its Attorney

SMITHWICK & BELENDIUK, P.C.

1990 M Street, N.W. Suite 510 Washington, D.C. 20036 (202) 785-2800 TODD P. ROBINSON

By:

A. Wray Fitch, III
His Attorney

A. Wray Fitch, III
His Attorney

GAMMON & GRANGE

Seventh Floor 8280 Greensboro Drive McLean, Virginia 22102-3807

> **SATURDAY COMMUNICATIONS** LIMITED PARTNERSHIP

By:

David E. Honig

To Attorney

Parid E. Honig

Its Attorney

LAW OFFICES OF DAVID E. HONIG

3636 16th Street, N.W. Suite B863 Washington, D.C. 20036

January 6, 1994

SETTLEMENT AGREEMENT

This Agreement made and entered into on this 6th day of January,

1994, by and between INTERMART BROADCASTING OF NORTH CAROLINA, INC.,

(herein "InterMart"), and TODD P. ROBINSON ("Robinson"), VICTORY CHRISTIAN

CENTER, INC. ("VCC"), and SATURDAY COMMUNICATIONS LIMITED

PARTNERSHIP ("SCLP").

WITNESSETH

WHEREAS, InterMart, party of the first part, and Robinson, File No. BPH-920327MI; VCC, File No. BPH-920326MA; and SCLP, File No. BPH-920327ML (herein "Dismissing Parties") are prosecuting applications before the Federal Communications Commission (herein "FCC") for a construction permit for a new FM station at Harrisburg, North Carolina ("Station"), and their applications have been designated for hearing in MM Docket No. 93-302;

WHEREAS, the parties believe it is in the public interest to settle the abovereferenced proceeding and to provide for the speedy initiation of new FM service to the citizens of Harrisburg, North Carolina;

NOW THEREFORE, in consideration of the mutual covenants herein made each to the other, the parties intending to be legally bound, the parties agree as follows:

1. <u>Dismissal of Application</u>. Subject to the conditions set out herein and the approval of this Agreement by the FCC, Robinson, VCC and SCLP agree pursuant to §73.3525 of the Commission's Rules, to dismiss their applications for a construction permit for a new FM Broadcast Station at Harrisburg, North Carolina. In return for such dismissal by VCC, InterMart agrees to pay to VCC its legitimate and prudent expenses in preparing

and prosecuting its application, not to exceed \$15,000.00 in cash or certified funds on or before the due date for such payment as described in Paragraph 4 of this Agreement. In return for such dismissal by SCLP, InterMart agrees to pay SCLP its legitimate and prudent expenses in preparing and prosecuting its application not to exceed \$20,000.00 in cash or certified funds on or before the due date for such payment as described in Paragraph 4 of this Agreement. InterMart and Robinson intend to merge their applications into InterMart's so that upon approval of this Settlement Agreement, and on the Settlement Date, James E. Martin, Jr., and Todd P. Robinson shall be equal shareholders in Intermart subject to a separate Shareholder's Agreement (copy attached hereto as Attachment A). Robinson's application shall be dismissed. By January 6, 1994, InterMart will seek leave to amend its application consistent with this paragraph.

- 2. Request for Commission Approval. No later than January 6, 1994, and after execution of this Agreement by both undersigned parties, the undersigned parties shall file a Joint Request, addressed to the particular officers, Bureau, or other appropriate sub-division of the FCC, having jurisdiction to act in this matter. The Joint Request shall request approval of this Agreement and shall be accompanied by such documents as are necessary and/or appropriate to obtain such approval. All undersigned parties shall vigorously support and defend the Joint Request and do all things necessary and appropriate to obtain a grant thereof.
- 3. <u>Cooperation of Parties</u>. Should the FCC refuse to approve this Agreement, the undersigned parties hereby agree that they will immediately make good faith efforts to resolve each FCC (or Court) objection in order to obtain FCC and/or Court approval. The undersigned parties agree that neither of them shall do or permit to be done anything which

would delay or impede the approval of this Agreement or the subsequent grant of the construction permit to InterMart.

- 4. Payment Procedures. The payment contemplated by Paragraph 1 of this Agreement shall be payable in cash and made within five (5) business days after the Commission's Order or Orders approving said payment, granting InterMart's application, as amended, and dismissing the applications of VCC, SCLP, and Robinson become final. A final Order of the Commission for purposes of this Agreement means an Order which has become final, the time for filing any appeals and/or petitions for reconsideration before the FCC or any Court of competent jurisdiction having expired and no such petitions or appeals having been filed, or, if any petitions and appeals are filed, such appeals and/or petitions having been disposed of favorably to this Agreement, and the time for filing any additional appeals having expired.
- 5. Escrow Arrangement. Within ten (10) days after execution of this Agreement InterMart will remit to Gary S. Smithwick, its attorney, a check for \$35,000.00 (the "Monies"), to cover the funds to be paid to VCC and SCLP under paragraph 1 of this Agreement. Smithwick shall handle the Monies pursuant to the Escrow Agreement, copy attached as Attachment B.
- 6. Entire Agreement. This Agreement constitutes the entire understanding between the parties and no other consideration, action or forbearance is contemplated or relied on by them. It is understood and agreed by the parties hereto that a condition precedent to the consummation of this Agreement is the final dismissal with prejudice of Robinson's, VCC's and SCLP's applications, and the final grant of InterMart's application, as amended. This Agreement may not be amended or terminated except by a writing executed by both parties.

- 6. Benefit. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.
- 7. Execution. This Agreement may be executed in counterparts and facsimile signatures shall be acceptable.
- 8. <u>Notices</u>. Any Notices required by this Agreement shall be effective if sent by certified mail, return receipt requested, postage prepaid as follows:

If to InterMart:

Mr. James E. Martin, Jr.
InterMart Broadcasting of North Carolina, Inc.
4810 Deltona Drive
Punta Gorda, Florida 33950

cc: Gary S. Smithwick, Esquire Smithwick & Belendiuk, P.C. 1990 M Street, N.W. Suite 510 Washington, D.C. 20036

If to VCC:

Mr. Robyn Jay Gool, President Victory Christian Center, Inc. P.O. Box 240433 Charlotte, North Carolina 28224

cc: John E. Fiorini, III, Esquire Gardner, Carton & Douglas 1301 K Street, N.W. Suite 900, East Tower Washington, D.C. 20005

If to SCLP:

Mr. David C. Belton Saturday Communications Limited Partnership 9929 Elm Creek Lane Charlotte, North Carolina 28277 If to SCLP:

Mr. David C. Belton
Saturday Communications Limited Partnership
9929 Elm Creek Lane
Charlotte, North Carolina 28277

cc: David E. Honig, Esquire
Law Offices of David E. Honig
1800 NW 187th Street
Miami, Florida 33056

If to Escrow Agent:

Gary S. Smithwick, Esquire Arthur V. Belendiuk, Esquire Smithwick & Belendiuk, P.C. 1990 M. Street, N.W. Suite 510 Washington, D.C. 20036

A notice shall be deemed received upon the date of delivery if given personally or, if given by mail, upon the receipt thereof. Any party may change its address for the purpose of this Article IV by giving notice to the other parties hereto in accordance with this Article IV.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

INTERMART BROADCASTING OF NORTH CAROLINA, INC.

President

By: Todd P. ROBINSON

VICTORY CHRISTIAN CENTER, INC.

By: President

SATURDAY COMMUNICATIONS
LIMITED PARTNERSHIP

By: General Partner

P.02

1008

TODD P. ROBINSON

By:	Todd P. Robinson
	roug F. Robinson
	VICTORY CHRISTIAN CENTER, INC
By:	Robin J. Soul
	SATURDAY COMMUNICATIONS
	LIMITED PARTNERSHIP
By:	
	General Partner

01/05/94 18:40 202 785 2804

Ø or

TODD P. ROBINSON

By:

Todd P. Robinson

VICTORY CHRISTIAN CENTER, INC.

By:

President

SATURDAY COMMUNICATIONS LIMITED PARTNERSHIP

By:

ESCROW AGREEMENT

This ESCROW AGREEMENT, dated this 6th day of January, 1994, among INTERMART BROADCASTING OF NORTH CAROLINA, INC., ("InterMart"); VICTORY CHRISTIAN CENTER, INC. ("VCC"); SATURDAY COMMUNICATIONS LIMITED PARTNERSHIP ("SCLP"), and SMITHWICK & BELENDIUK, P.C. (hereinafter "Escrow Agent").

WITNESSETH:

WHEREAS, InterMart, VCC and SCLP have entered into a Settlement Agreement pursuant to which, VCC and SCLP will dismiss their applications for a new FM radio station on Channel 224A in Harrisburg, North Carolina; and

WHEREAS, VCC and SCLP have requested InterMart to secure the obligation to VCC and SCLP in connection with the Settlement Agreement, by entering into this Escrow Agreement;

NOW, THEREFORE, in consideration of the terms of the Settlement Agreement and the mutual promises herein contained, it is agreed as follows:

ARTICLE I

Escrow and Escrow Fund

(a) No later than January 18, 1994, InterMart shall deposit with the Escrow Agent the sum of THIRTY-FIVE THOUSAND (\$35,000.00) DOLLARS ("Escrow Funds"). The Escrow Funds shall be invested by Escrow Agent in an insured interest-bearing account ("Escrow Account").

- (b) The Escrow Agent, subject to the terms of the Settlement Agreement, shall deliver and release from Escrow the Escrow Funds, plus any interest accrued thereon, held in the Escrow Account in accordance with one of the following Notices to the Escrow Agent:
- (1) The Escrow Agent shall deliver FIFTEEN THOUSAND (\$15,000.00)

 DOLLARS of the Escrow Funds to VCC, and TWENTY THOUSAND (\$20,000.00)

 DOLLARS to David E. Honig, Esquire, Escrow Account #2 at Peoples National Bank of Commerce, Miami, Florida, for the benefit of SCLP, and all interest accrued thereon to InterMart upon receipt of a joint written Notice from VCC and SCLP and InterMart certifying that the terms in the Settlement Agreement for the payment of money held by Escrow Agent to VCC and SCLP have been fulfilled. Should no such further joint written Notice be forthcoming within a reasonable time, Escrow Agent may, in its sole discretion, seek resolution through arbitration pursuant to the rules of the American Arbitration Association.
- (2) The Escrow Agent shall deliver to InterMart all Escrow Funds, plus any interest accrued thereon, upon receipt of a joint written Notice from InterMart and VCC and SCLP certifying that the Settlement Agreement has been terminated for any reason, and directing that such disbursement be made to InterMart.
- (3) In the event of a dispute between InterMart and VCC or SCLP, the Escrow Agent shall seek resolution through arbitration pursuant to the Rules of the American Arbitration Association; provided, however, that, should InterMart and VCC or SCLP provide joint written Notice to the Escrow Agent requesting that the Escrow Funds continue to be held by the Escrow Agent pending any settlement negotiations, the Escrow Agent shall continue to hold the Escrow Funds in insured interest bearing securities or accounts until

joint written Notice is provided the Escrow Agent by InterMart and VCC or SCLP directing disposition of the proceeds. Should no such further joint written Notice be forthcoming within a reasonable time, Escrow Agent shall then seek resolution through arbitration pursuant to the rules of the American Arbitration Association.

(c) The Escrow Agent shall be discharged from its obligations under this Agreement upon delivery of the Escrow Funds plus any interest accrued thereon as set forth herein.

ARTICLE II

Escrow Agent

- (a) The duties and responsibilities of the Escrow Agent shall be limited to those expressly set forth in this Agreement.
- (b) In performing any of its duties hereunder, the Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses except for the Escrow Agent's default or negligence. The Escrow Agent may consult counsel and shall not incur any liability for any action taken or omitted in good faith upon advice of counsel, or for any action taken or omitted in reliance upon any instrument, not only as to its execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which the Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Agreement. Any expenses incurred by Escrow Agent as a result of the necessity to seek counsel or arbitration concerning the performance of this Escrow Agreement shall be borne equally among InterMart and such other party or parties as have given notice of a dispute pursuant to Article I, Paragraph (b)(3) of this Escrow Agreement.

ARTICLE III

Amendments

This Agreement cannot be changed or terminated orally and no waiver of compliance with any provision or condition hereof shall be effective unless evidenced by an instrument in writing duly executed by the party hereto sought to be charged with such waiver.

ARTICLE IV

Notices

Any notice, report, demand, waiver or objection required, permitted or contemplated hereunder shall be in writing and shall be given personally or by prepaid registered or certified mail, with return receipt requested, addressed as follows:

If to InterMart:

Mr. James E. Martin, Jr.
InterMart Broadcasting of North Carolina, Inc.
4810 Deltona Drive
Punta Gorda, Florida 33950

cc: Gary S. Smithwick, Esquire Smithwick & Belendiuk, P.C. 1990 M Street, N.W. Suite 510 Washington, D.C. 20036

If to VCC:

Mr. Robyn Jay Gool, President Victory Christian Center, Inc. P.O. Box 240433 Charlotte, North Carolina 28224 cc: John E. Fiorini, III, Esquire Gardner, Carton & Douglas 1301 K Street, N.W. Suite 900, East Tower Washington, D.C. 20005

If to SCLP:

Mr. David C. Belton Saturday Communications Limited Partnership 9929 Elm Creek Lane Charlotte, North Carolina 28277

cc: David E. Honig, Esquire
Law Offices of David E. Honig
3636 16th Street, N.W.
Suite B863
Washington, D.C. 20010

If to Escrow Agent:

Gary S. Smithwick, Esquire Arthur V. Belendiuk, Esquire Smithwick & Belendiuk, P.C. 1990 M. Street, N.W. Suite 510 Washington, D.C. 20036

A notice shall be deemed received upon the date of delivery if given personally or, if given by mail, upon the receipt thereof. Any party may change its address for the purpose of this Article IV by giving notice to the other parties hereto in accordance with this Article IV.

ARTICLE V

EXECUTION

This Escrow Agreement may be executed in counterparts and facsimile signatures shall be acceptable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

INTERMART BROADCASTING OF NORTH CAROLINA, INC.

President

VICTORY CHRISTIAN CENTER, INC.

By:
President

SATURDAY COMMUNICATIONS LIMITED PARTNERSHIP

By: General Partner

ESCROW AGENT:

SMITHWICK & BELENDIUK, P.C.

By: Gary S. Smithwick

Arthur V Belefitink

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

INTERMART BROADCASTING OF NORTH CAROLINA, INC.

By:	
	President
	VICTORY CHRISTIAN CENTER, INC.
Ву:	Kolyn J. Sml President
	SATURDAY COMMUNICATIONS LIMITED PARTNERSHIP
Ву:	General Partner
	General Partner
	ESCROW AGENT:
	SMITHWICK & BELENDIUK, P.C.
Ву:	
·	Gary S. Smithwick
By:	
-,-	Arthur V. Belendiuk

SMTHWK/BLNDK-DC

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

INTERMART BROADCASTING OF NORTH CAROLINA, INC.

By:	
•	President
	VICTORY CHRISTIAN CENTER, INC.
By:	President
	SATURDAY COMMUNICATIONS LIMITED PARTNERSHIP
By:	Danis C. Pelke. General Partner
	ESCROW AGENT:
	SMITHWICK & BELENDIUK, P.C.
By:	
	Gary S. Smithwick
By:	Arthur V. Belendiuk

DECLARATION

- I, James E. Martin, Jr., declare as follows:
- 1. I am President of InterMart Broadcasting of North Carolina, Inc. ("InterMart"), an applicant for a construction permit for a new FM station at Harrisburg, North Carolina (File No. BPH-920326MB).
- 2. I have read and signed a settlement agreement with Victory Christian Center, Inc. ("VCC"); Saturday Communications Limited Partnership ("SCLP"); and Todd P. Robinson ("Robinson") which would result in a grant of the construction permit to InterMart, and the dismissal of the VCC and SCLP applications in exchange for the payment as set out in the Settlement Agreement. The Agreement would also result in a merger of the Robinson and InterMart applications into InterMart, and dismissal of Mr. Robinson's application. I am neither paying nor receiving any other consideration for the dismissal of Robinson's application, and I will be required to participate equally with Mr. Robinson in the sharing of equity, profits, losses, and cost advances.
- 3. The settlement agreement is considered by me to be in the public interest because (a) it would eliminate the need for further FCC proceedings, and (b) it would result in the more rapid initiation of new FM service to the residents of Harrisburg, North Carolina.
- 4. The application of InterMart was not filed for the purpose of reaching or carrying out the semiement agreement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this STAday of 30. , 1994.

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DECLARATION

- I, Robyn Jay Gool, declare as follows:
- 1. I am an authorized principal of Victory Christian

 Center, Inc. ("VCC"), applicant for a construction permit for a

 new FM station at Harrisburg, North Carolina (File No. BPH920326MA).
- 2. I have read and signed a settlement agreement with InterMart Broadcasting of North Carolina, Inc. ("InterMart"), which would result in a grant of the construction permit to InterMart, and dismissal of VCC's application in exchange for its legitimate and prudent expenses in preparing and prosecuting its application, not to exceed \$15,000.00.
- 3. The settlement agreement is considered by me to be in the public interest because (a) it would eliminate the need for further FCC proceedings, and (b) it would result in the more rapid initiation of new FM service to the residents of Harrisburg, North Carolina.
- 4. VCC's application was not filed for the purpose of reaching or carrying out the settlement agreement.

I declare under penalty of perjury that the foregoing it true and correct.

Executed this 5th day of January, 1994.

ROBYN JAY GOOL

President

UI/ UU/ UI

DECLARATION

- I, Todd P. Robinson, declare as follows:
- 1. I am an applicant for a construction permit for a new FM station at Harrisburg, North Carolina (File No. BPH-920327MI).
- 2. I have read and signed a settlement agreement with InterMart Broadcasting of North Carolina, Inc. ("InterMart"), which would result in a grant of the construction permit to InterMart, and the merger of my application with James E. Martin, Jr., as an equal shareholder with James E. Martin, Jr. I am neither paying nor receiving any other consideration for the dismissal of my application, and I will be required to participate equally with James E. Martin, Jr., in the sharing of equity, profits, losses, and cost advances as set forth in the Shareholders' Agreement.
- 3. The settlement agreement is considered by me to be in the public interest because: (a) it would eliminate the need for further FCC proceedings, and (b) it would result in the more rapid initiation of new FM service to the residents of Harrisburg, North Carolina.
- 4. My application was not filed for the purpose of reaching or carrying out the settlement agreement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this b day of JAMANY, 1994.

rodd P. Robinson

DECLARATION

- I. David C. Beiton, declare as follows:
- 1. I am an authorized principal of Saturday Communications Limited Partnership ("SCLP"), applicant for a construction permit for a new FM station at Harrisburg, North Carolina (File No. BPH-920327ML).
- 2. I have read and signed a settlement agreement with InterMart Broadcasting of North Carolina, Inc. ("InterMart"), which would result in a grant of the construction permit to InterMart, and dismissal of SCLP's application in exchange for the payment to SCLP of \$20,000.00, which represents the total of SCLP's legitimate and prudent expenses in preparing and prosecuting its application. Attached hereto is an itemization of SCLP's legitimate and prudent expenses.
- 3. The settlement agreement is considered by me to be in the public interest because (a) it would eliminate the need for further FCC proceedings, and (b) it would result in the more rapid initiation of new FM service to the residents of Harrisburg, North Carolina.
- 4. SCLP's application was not filed for the purpose of reaching or carrying out the settlement agreement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6 day of January, 1994.

DAVID C. BELTON

DECLARATION OF DAVID BELTON

David Belton, General Partner of Saturday Communications

Limited Partnership ("Saturday") hereby certifies under penalty of

perjury that the "Schedule of Expenses" appended hereto accurately

reflects Saturday's legitimate and prudent expenses incurred in the

prosecution of its application.

David Beaton

General Partner

Saturday Communications Limited Partnership

January 6, 1993